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8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**
10

11 ROBERT COHEN, individually and on
12 behalf of all others similarly situated,

13 Plaintiff,

14 vs.

15 UNITED HEALTHCARE SERVICES,
16 INC.,

17 Defendant.

CASE NO. 10-2027 CAS (ANx)

CLASS ACTION

**[PROPOSED] ORDER GRANTING
PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

Judge: Hon. Christina A. Snyder

18 The unopposed Motion for Preliminary Approval of Class Action Settlement,
19 filed by Plaintiff Robert Cohen (“Class Representative” or “Plaintiff”) came on
20 regularly in Courtroom 5 of the above captioned court, Hon. Christina A. Snyder
21 presiding, Melissa M. Harnett, of Wasserman, Comden, Casselman & Esensten,
22 L.L.P. (“WCCE”) and Craig J. Ackermann, of Ackermann & Tilajef, P.C., (“A&T”)
23 appeared on behalf of Plaintiffs. Noah Finkel, appeared on behalf of Defendant
24 United HealthCare Services, Inc. (“UHS”).

25 This Court having fully received and considered the Plaintiff’s notice of
26 motion, supporting memorandum of points and authorities, declarations of Melissa
27 M. Harnett and Craig J. Ackermann, the Settlement Agreement, the proposed Class
28 Notice, and the proposed Opt-Out and Claim forms, and the oral argument presented

1 to the Court, and in recognition of the Court's duty to make a preliminary
2 determination as to the reasonableness of any proposed class action settlement, and
3 to conduct a fairness hearing as to good faith, fairness, adequacy, and
4 reasonableness of any proposed settlement, HEREBY ORDERS and MAKES
5 DETERMINATIONS as follows:

6 Plaintiff and his counsel filed this class action lawsuit alleging that Defendant
7 UHS failed to pay overtime wages or any wages for pre- and post-shift working time
8 spent on computer-related work to call center employees, pay call center employees
9 for missed, on-duty and untimely meal periods; issue accurate itemized wage
10 statements to call center employees; and pay call center employees all wages due to
11 them upon termination or separation of employment. Plaintiff has also alleged on a
12 class basis that the foregoing violated California's Unfair Competition Law,
13 Business and Professions Code § 17200, et seq. and that civil penalties are payable
14 under California's Private Attorney General's Act of 2004.

15 On November 15, 2010 after a full-day of mediation, the parties reached a
16 class settlement agreement for the disputed claims. In full settlement of class claims
17 that were encompassed by this case, Plaintiff and UHS have agreed to the entry of a
18 Joint Stipulation of Class Action Settlement (the "Agreement"), attached hereto.
19 UHS continues to deny all allegations contained in the operative Amended
20 Complaint.

21 Plaintiff has moved this Court to (1) preliminarily approve the Agreement; (2)
22 certify the Class for settlement purposes only; (3) appoint Plaintiff as Class
23 Representative; (4) appoint Melissa Harnett of WCCE and Craig Ackermann of
24 A&T as Class Counsel; (5) approve the proposed Class Notice and related forms;
25 (6) schedule a date for a hearing on Final Approval; and (7) enter a Preliminary
26 Approval Order.

**ORDER CONDITIONALLY CERTIFYING SETTLEMENT CLASS AND
APPOINTING CLASS REPRESENTATIVES AND CLASS COUNSEL**

The Court finds that provisional certification of the following class for settlement purposes only is appropriate under Federal Rules of Civil Procedure, Rule 23(b)(3) and related case law: All hourly, nonexempt telephone-based call center employees employed by United HealthCare Services, Inc.'s Ovations business segment who worked at Ovation's Cypress, California and Santa Ana, California locations at any time from March 19, 2006 to February 1, 2011("Class Period") (including the 634 employees already identified by Defendant).

The Court finds that the Settlement Class meets the numerosity requirement of Rule 23(a)(1) because it consists of approximately 634 class members who have been identified through UHS' records. The commonality requirement of Rule 23(a)(2) is also met because there are issues of law and fact common to the class, such as whether Defendant's California call center employees were paid overtime for boot-up and shut-down computer-related work and whether UHS paid its employees for missed, on-duty and untimely meal periods. Plaintiff also alleges that Defendant paid for scheduled time, rather than for actual time worked, including pre- and post-shift time that was actually or constructively known by Defendant to have been worked by its call center workers. In the absence of class certification and settlement, each individual Settlement Class member would be forced to litigate core common issues of law and fact, including the validity of each Settlement Class members' claims that they were unlawfully denied pay for pre- and post-shift work and they were not paid for missed, on-duty, and untimely meal periods, as required by law. Because the Plaintiff and Settlement Class members' claims all arise from the same events and course of conduct, and are based on the same legal theories, the typicality requirement of Rule 23(a)(3) is also satisfied. The adequacy of representation requirement set forth in Rule 23(a)(4) is also met here because the Class Representative has the same interests as all members of the Settlement Class,

1 and is represented by experienced and competent counsel.

2 Pursuant to Rule 23(b)(3), the Court further finds that common issues
3 predominate over individual issues in the litigation and that class treatment is
4 superior to other means of resolving the instant dispute. Employing the class device
5 here will not only achieve economies of scale for Settlement Class members with
6 relatively small individual claims, but will also conserve the resources of the judicial
7 system by avoiding the waste and delay of repetitive proceedings, and prevent the
8 inconsistent adjudications of similar issues and claims.

9 The Court finds that the Plaintiff, Robert Cohen, is an adequate class
10 representative and appoints him as such.

11 Pursuant to Federal Rules of Civil Procedure Rule 23(g), the Court finds that
12 Plaintiff's Counsel (Melissa Harnett of WCCE and Craig Ackermann of A&T) has
13 adequately represented the Settlement Class. Specifically, they have sufficiently
14 identified and investigated the claims in this matter; have presented evidence to the
15 court of their experience in handling other wage and hour class actions; have
16 demonstrated knowledge of the applicable law; and have allocated sufficient
17 resources to represent the class. Accordingly, pursuant to Rule 23(g)(1), Melissa
18 Harnett of WCCE and Craig Ackermann of A&T are hereby appointed as Class
19 Counsel.

20 The Court recognizes that certification under this Order is for settlement
21 purposes only, and shall not constitute or be construed as an admission by UHS that
22 this action is appropriate for class treatment for litigation purposes. Entry of this
23 Order is without prejudice to the rights of Defendant to oppose certification of a
24 class in this action, and/or to seek decertification or modification of the Settlement
25 Class should the proposed Settlement Agreement not be granted final approval.

26 **PRELIMINARY APPROVAL OF THE SETTLEMENT AGREEMENT**

27 The Court has reviewed the Settlement Agreement and the proposed Class
28 Notice documents, which are attached as exhibits hereto. The Court finds, on a

1 preliminary basis, that the Settlement Agreement falls within the range of
2 reasonableness of a settlement that could ultimately be given final approval by this
3 Court. The Court also finds, on a preliminary basis, that the Agreement appears to
4 be the product of intensive, non-collusive, arms' length negotiations between well-
5 informed counsel, and is therefore presumptively valid. The Court also finds, on a
6 preliminary basis, that the proposed resolution of the FLSA claims is fair and
7 reasonable. It appears to the Court on a preliminary basis that the settlement fund
8 amount of \$1,250,000 is fair and reasonable to all Settlement Class members when
9 balanced against the probable outcome of further litigation relating to liability and
10 damages issues. It further appears that extensive and costly investigation, discovery,
11 research and mediation was conducted and, as such, counsel for the parties' were
12 both able to reasonably evaluate their respective positions. It further appears that
13 the settlement at this time will avoid additional substantial costs which have already
14 been incurred by both parties, as well as avoid the delay and risks that would be
15 presented by the further prosecution of the litigation.

16 The Court therefore preliminarily and conditionally approves the Settlement,
17 including: (1) the proposed Incentive Award for Plaintiff of \$12,000 in addition to
18 his pro rata share of the settlement fund; (2) the reasonable costs of Class Counsel
19 (estimated at \$13,750); (3) attorneys' fees of 25% of the Settlement Fund, after
20 costs; and (4) payment of reasonable settlement administration costs from the
21 Settlement Fund (estimated at no more than \$18,000). Pursuant to Rule 23(g)(4)
22 and Rule 54(d)(2), Plaintiff's Counsel is expected to file a Motion for Approval of
23 their attorneys' fees and costs in connection with and to be heard at the same time as
24 the Final Fairness Hearing regarding the settlement.

25 **APPROVAL OF DISTRIBUTION OF THE CLASS NOTICE**

26 This Court finds the proposed Class Notice, proposed Opt-Out form, and
27 proposed Claim Form, which are attached hereto as Exhibits 1, 2, and 3
28 respectively, fairly and adequately advise potential class members of the terms of

the proposed settlement, the formula that will be used to compute their pro rata allocation of the settlement, and the mechanisms for the former employee class members to claim their pro rata allocation of settlement, to file documentation in opposition to the proposed settlement, and to appear at the Fairness Hearing to be conducted on the date set forth below. The Court further finds that the Class Notice and proposed distribution of such notice by first class mail to each identified Settlement Class member at his or her last known address (with database search and re-mailing of returned mail) comports with all constitutional requirements, including those of due process, and is the best notice practicable under the circumstances.

The Court confirms the selection of Simpluris, Inc. as the Settlement Administrator, the reasonable fees of which will be paid from the Settlement Fund. Accordingly, good cause appearing, the Court hereby approves the proposed Class Notice and adopts the following dates and deadlines:

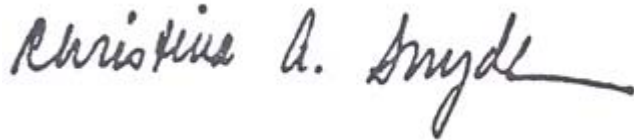
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| By February 10, 2010 | <p>Deadline for UHS to provide class member information (name, last known address and phone number, social security number and number of weeks worked to the Settlement Administrator and Class Counsel, if such information has not already been provided</p> <p>UHS will transfer the quoted rate of Settlement Administration to the Settlement Administrator not to exceed \$18,000</p> |
| By February 15, 2010 | <p>Settlement Administrator will send out a Notice of Class Action Settlement to Class, which will include an Opt Out form. For Former Employees of UHS, Settlement Administrator will also include a Claim Form.</p> |

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| 1 | Postmarked no later than 60 days | Deadline for Eligible Settlement |
| 2 | from date on which Notices are | Class Members to submit Opt Out |
| 3 | sent out by the Settlement | forms, and Former Employee Class |
| 4 | Administrator | Members to submit Claim Forms to |
| 5 | | the Settlement Administrator |
| 6 | | |
| 7 | | If envelope containing the Class |
| 8 | | Notice has not been returned, it will |
| 9 | | be conclusively presumed that Class |
| 10 | | Member received the Notice. If no |
| 11 | | Opt-Out was received, the |
| 12 | | Settlement Administrator will |
| 13 | | presume that the Class Member |
| 14 | | would like to be included in the |
| 15 | | Settlement. If a Claim Form has not |
| 16 | | been returned, the money will be |
| 17 | | reallocated pro rata to participating |
| 18 | | class members. |
| 19 | No later than 5 days after receipt | Settlement Administrator will serve |
| 20 | by Settlement Administrator of | on Class and Defense Counsel via e- |
| 21 | original Opt-Out Form requests, | mail date-stamped copies of the |
| 22 | Claim Forms requests, objection | documents sent to Settlement |
| 23 | statements, and withdrawal of | Administrator |
| 24 | objection statements | |
| 25 | Weekly | Settlement Administrator will |
| 26 | | provide reports to Class and |
| 27 | | Defense Counsel updating them as |
| 28 | | to the number of responses received, |
| | | including but not limited to, Opt- |
| | | Out forms, Claim forms, and |
| | | Objection statements |
| | No later than 5 business days | Deadline for Class Counsel to |
| | prior to the Court's Final | provide the Court, Defense and |
| | Approval Hearing | Class Counsel with a declaration by |
| | | the Settlement Administrator of due |
| | | diligence and proof of mailing of |
| | | the Notice of Class Action |
| | | Settlement, Opt-Out Form, and |
| | | Claim Form |

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| 1 | No later than 3 business days | Deadline for Settlement |
| 2 | prior to Final Approval Hearing | Administrator to compile and |
| 3 | | deliver to Defense and Class |
| 4 | | Counsel a final report with |
| 5 | | information regarding (a) the |
| 6 | | number of Opt-Out forms filed; (b) |
| 7 | | the final pro rata portion of each |
| 8 | 21 days after Final Approval and | Settlement Class; and (c) the |
| 9 | Fees Motion are Filed | number of undeliverables. |
| 10 | | Final Approval and Fairness |
| 11 | | Hearing. |
| 12 | Effective Date | Date Court considers entry of order |
| 13 | | approving the Class Settlement after |
| 14 | | Notice to Class and Fairness |
| 15 | | Hearing |
| 16 | | The day on which the later of these |
| 17 | | events has occurred: |
| 18 | | (a) the Court's final approval of |
| 19 | | settlement if no objections by class |
| 20 | | members have been filed and not |
| 21 | | withdrawn, |
| 22 | | (b) the time for appeal has expired if an |
| 23 | | objection has been filed and not |
| 24 | | withdrawn, or |
| 25 | | (c) the final resolution of any appeal |
| 26 | | which has been filed. |
| 27 | | It is the intention of the parties that the |
| 28 | | Settlement shall not become effective |
| | | until the Court's order approving the |
| | | Settlement is completely final, and there |
| | | is no further recourse by an appellant or |
| | | objector who seeks to contest the |
| | | Settlement. |
| 22 | Within 30 days of the Effective | Defendant shall transfer the |
| 23 | Date | remaining \$1,232,000.00 to the |
| 24 | | Settlement Administrator. |
| 25 | | The Settlement Administrator shall |
| 26 | | mail, by first-class US Mail to the |
| 27 | | last-known address, the Individual |
| 28 | | Settlement Amount to each |
| | | participating class member, the |

| | | |
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| 1 | | incentive award, and the amount of |
| 2 | | attorney's fees and costs to Class |
| 3 | Within 21 business days of | Deadline for Settlement |
| 4 | Settlement Administrator mailing | Administrator to file with the Court |
| 5 | the settlement checks | and provide to Class Counsel a |
| 6 | | declaration of payment. |
| 7 | 90 days after the mailing of the of | All un-cashed settlement checks |
| 8 | the settlement checks | will become null and void and the |
| 9 | | unclaimed settlement funds will be |
| 10 | | sent by check to a non-profit charity |
| 11 | | mutually agreed upon by Class |
| 12 | | Counsel and Defendant's Counsel. |
| 13 | 180 days after the Effective Date | The Action shall be dismissed with |
| 14 | | prejudice. The Court will retain |
| 15 | | jurisdiction to enforce the terms of |
| 16 | | the Settlement Agreement. |

The date of the Final Approval hearing is hereby set for: June 6, 2011 at 10:00 a.m. in Courtroom 5 of the U.S. District Court, 312 N. Spring Street, Los Angeles, California 90012.



Dated: February 7, 2011

HON. CHRISTINA A. SNYDER
UNITED STATES DISTRICT COURT JUDGE